IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9011 OF 2004

Shri Bhaskar Bhagwant Shinde,)
Age about 68 years, Occupation:)
Retired, Residing at 347, Rasta)
Peth, Pune - 411 011.) ... Petitioner

Versus

1. Sou. Vasudha Madhukar Kadam,)
age about 65 years, Occu.)
Household.)

2. Shri Madhukar Bapurao Kadam,)
age about 68 years, Occu.)
Retired, both residing at)
176, Pragati Housing Society,)
Sahakar Nagar No.2, Pune -)
411 009.) ... Respondents

Mr. G.S. Godbole for the petitioner.

Mr. N.P. Deshpande for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 6TH MAY, 2005.

ORAL JUDGMENT:-

1. Rule. The respondents waive service. By consent of the parties, taken up for final hearing.

2. The petitioner is the original defendant in Civil Suit No.1758 of 1989 filed by the respondents (original plaintiffs) in the Small Causes Court at Pune. The suit was filed for possession of the suit premises on the grounds of default in payment of rent, bonafide

requirement, acquisition of alternate accommodation, non user and change of user of the suit premises.

3. The case of the plaintiffs is that the property being House No.347 situate at Rasta Peth, Pune, was owned by the mother of plaintiff 1. Plaintiff 2 is her husband. The defendant is the monthly tenant of two rooms on the first floor of the said house. The agreed rent was Rs.35/- per month inclusive of education cess and permitted increases. The tenancy month commenced from first of every English Calender month. According to the plaintiffs, the defendant was in arrears of rent from 1/10/1986. The plaintiffs gave a notice demanding arrears of rent on 18/3/1989. According to the plaintiffs, the said notice was replied by the defendant raising false contentions. The defendant remitted Rs.48/- by money order. However, the money order was refused by the plaintiffs. The defendant had made some reference to a demand draft in the reply. However, in fact, no demand draft was sent. The plaintiffs claim that they were entitled to recover the arrears of rent, permitted increases and education cess. The plaintiffs also alleged that the defendant had acquired alternate accommodation and had shifted there keeping the suit premises under lock. The defendant had not used the suit premises for more than six months. The plaintiffs also alleged that the defendant had caused damage to the suit premises and he had changed the user of the suit premises.

4. The defendant filed his written statement and denied all the allegations. He contended that he had been paying the rent regularly. Earlier a suit being Suit No.2814 of 1979 was filed in which he had deposited the rent upto September, 1986. He had sent rent for the months of October and November, 1988, which was refused by the plaintiffs. According to him, thereafter, he sent money order for October, 1986 to December, 1986, which was also refused. He had received notice dated 18/3/1989 on 27/3/1989. He had sent demand draft of Rs.1,412/- with the reply notice for the period from 1/10/1986 to 30/4/1989. The plaintiffs, however, did not encash the said demand draft. According to the defendant, he had deposited the rent upto September, 1990. He contended that the suit is barred by resjudicata. All other allegations as regards nuisance, construction of permanent nature without permission from the landlord, acquisition of alternate accommodation, change of user and non-user were denied by him.

5. In support of his case, the plaintiffs examined plaintiff 2. The defendant examined himself. After perusing the oral and documentary evidence, the trial court by its judgment and decree dated 3/8/2001 dismissed the suit. The trial court held that the plaintiffs had not proved any of the grounds urged by them.

6. Being aggrieved by this judgment and decree, the

plaintiffs filed an appeal being Appeal No.772 of 2001 in the District Court at Pune. The District Court confirmed the finding of the trial court on all grounds except the ground of default in payment of rent. The District Court held that the plaintiffs had proved that the defendant is a defaulter. This judgment and decree is impugned in this appeal.

7. I have heard, at some length, Mr. Godbole, the learned counsel appearing for the petitioner. Mr. Godbole contended that the District Court erred in setting aside the finding of fact recorded by the trial court that the defendant was not a defaulter. I am unable to agree with the learned counsel. The suit notice is dated 18/3/1989. By the said notice, the plaintiffs had demanded arrears of rent from 1/10/1986. The said notice was received by the defendant on 27/3/1989. The defendant sent a reply dated 31/3/1989 stating that Demand Draft No.208 dated 31/3/1989 drawn on Union Bank of India, Pune Service Branch, Pune, in the sum of Rs.1,412/- being the arrears of rent is being sent along with the said reply. The plaintiffs sent a reply dated 5/4/1989 stating that the plaintiffs had received letter dated 31/3/1989, however the plaintiffs have not received any demand draft along with the said letter. The defendant sent a reply to this letter dated 10/4/1989 stating that the entire dues from 1/10/1986 till 30/4/1989 amounting to Rs.1,412/- have been separately sent by crossed order Demand Draft No.532185 dated

31/3/1989 drawn on Union Bank of India, Pune Service Branch, Pune. The defendant sent another letter dated 24/4/1989 to the plaintiffs stating that he had received letter dated 5/4/1989; however, before the receipt of that letter, he had sent a demand draft in the sum of Rs.1,412/- under R.P.A.D. letter, which the plaintiffs did not accept and, therefore, he is sending Demand Draft No.208 dated 31/3/1989 drawn on Union Bank of India, Pune Service Branch, Pune in the sum of Rs.1,412/- along with the said letter. The plaintiffs sent a reply dated 30/4/1989 stating that though they had received letter dated 24/4/1989, they had not received any draft along with it. It appears from the various letters sent by the defendant that the defendant claims to have sent a demand draft along with the reply dated 31/3/1989 being Demand Draft No.208 and he claims that it was dated 31/3/1989 and it was drawn on Union Bank of India, Pune Service Branch, Pune. Again in reply dated 10/4/1989, the defendant says that he had sent a demand draft separately being Demand Draft No.532185 dated 31/3/1989 drawn on Union Bank of India, Pune Service Branch, Pune. Again by letter dated 24/4/1989, he stated that he is sending a demand draft in the sum of Rs.1,412/- bearing No.208 dated 31/3/1989 drawn on Union Bank of India, Pune Service Branch, Pune. The plaintiffs' case is that they have not received the demand draft at all. The defendant's claim that he has sent the demand draft does not appear to be true firstly because the three letters create a lot of confusion. The numbers of the demand

draft defer and it is not understood as to really with which letter the defendant sent the demand draft. The confusion is compounded by the evidence of the defendant. As per his letters, he has sent one demand draft by R.P.A.D. letter dated 31/3/1989, one demand draft separately along with reply dated 10/4/1989 and one demand draft on 24/4/1989. In the cross-examination, he has stated that he obtained the demand draft in the sum of Rs.1,412/- only once. He has further stated that he has sent it only with the letter dated 24/4/1989 i.e. Ex-110. He has stated that before that he did not send any demand draft. He has again stated that he did not send any demand draft with reply dated 31/3/1989 Ex-100. The defendant has further stated that after 5/4/1989, he had not sent any demand draft to the plaintiffs and, he had simply sent xerox copy of the draft which was earlier sent by him to the plaintiffs.

8. All this lead to the inevitable conclusion that the defendant did not send any demand draft to the plaintiffs either by letter dated 31/3/1989 (Ex-100) or by reply dated 10/4/1989 (Ex-110) or by reply dated 24/4/1989 (Ex-115). Therefore, the case that the arrears of rent were paid by the defendant is not proved. I affirm the finding of the District Court on this issue.

9. Mr. Godbole then urged that the Nazir's Report dated 29/4/2000 shows that the defendant has regularly deposited the rent in the trial court. He submitted that

in view of this, the defendant should get the benefit of section 12(3) of the Bombay Rent Hotel and Lodging House Rates Control Act (for short, "the Bombay Rent Act").

10. Mr. Deshpande, the learned counsel for the respondents pointed out that the defendant might have deposited rent in the trial court but he has failed to deposit the arrears in the District Court. He submitted that the appeal is a continuation of the suit and, therefore, if the defendant has failed to deposit the rent in the District Court, he cannot get the benefit of section 12(3) of the Bombay Rent Act. In this connection, the learned counsel relied on the judgment of the Supreme Court in **Mrinalini B. Shah and another v. Bapalal Mohanlal Shah, AIR 1980 SC 354**, the judgment of the Full Bench of the Gujarat High Court in **Lalchand Jematmal v. Nansbhai Ranchhoddas and othes, AIR 1976 Guj. 122** and the judgment of the Gujarat High Court in **Ratilal Balabhai Nazar v. Ramchhodbhai Shankerbhai Patel and others, AIR 1968 Guj. 172**.

11. In reply to this, Mr. Godbole, the learned counsel appearing for the petitioner urged that section 12 of the Bombay Rent Act prior to amendment in the year 1987 by Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1986 i.e. Act No.18 of 1987 contained two sub-clauses in sub-section 3. Sub-clause (a) provided three contingencies.

(i) When the rent is payable by month;

(ii) When there is no dispute about standard rent and permitted increases.

(iii) When the arrears of rent were payable for a period of more than six months.

12. In all the aforesaid three contingencies, if the tenant did not tender/pay/deposit in Court the arrears of rent within one month from the date of service of notice of demand or did not raise any dispute of standard rent within one month of service of notice of demand by filing application under section 11, the court had to pass a decree for eviction.

13. The learned counsel contended that sub-clause (b) of sub-section 3 of section 12 provided that "in any other case" meaning the cases in which - (1) the rent was not payable monthly (2) the arrears of rent was for a period less than six months (3) there was a dispute regarding the standard rent, if the tenant deposits the entire amount of rent and permitted increases then due on or before the first date of hearing of the suit and then continues to deposit the rent regularly in court till the disposal of the suit, the court could not pass a decree against such tenant.

14. According to the learned counsel, thus, prior to

amendment by Act No.18 of 1987, the court had no power to grant relief against forfeiture and in fact, the provisions of section 114 of the Transfer of Property Act were expressly held to be inapplicable to premises governed by Rent Control Legislations. Mr. Godbole contended that in **V. Dhanpal Chettiyar v. Yesodai Ammal, 1979 M.L.J. 773**, the Constitution Bench of the Supreme Court has held that the provisions of the Transfer of Property Act containing requirement of termination of tenancy are inconsistent with Rent Control Legislation. Following this judgment, another Bench of the Supreme Court has held in **Arjun Khimal v. Jamnadas Tuliyani (1989) 4 SCC 612** that section 114 of the Transfer of Property is inapplicable.

15. The learned counsel further submitted that by amending Act No.18 of 1987, what is sought to be achieved is to grant a power to the court to give the tenants relief against forfeiture which could not be given earlier. This is also evident from the proviso to sub-section 3 of the amended provisions of sub-section 12 of the Bombay Rent Act. Mr. Godbole contended that in fact, by the amendment, the earlier difference in cases where rent was payable by month and was not payable by month, cases where the rent was due for less than six months and more than six months etc. has been done away with. An important provision is made for payment of rent with interest on or before the first date of the hearing of the suit and, thereafter, regular payment till the

disposal of that suit. If tenant complied with this condition, he gets the first relief against forfeiture. If after such a relief being granted, the tenant again commits a default, then the landlord has a right to institute a fresh suit on the ground of default by issuing a notice or demand and even if the tenant deposits the rent in such second suit, the tenant will lose his second right to get a relief against forfeiture. Thereafter, such a tenant will never get a relief against forfeiture even if the conditions for grant of such relief are complied with.

16. The learned counsel drew my attention to the judgment of the Supreme Court in **Vasant Ganesh Damle v. Shrikant Datar, 2002 (2) All M.R. 594**, and contended that the Supreme Court has interpreted the amended provisions of section 12(3) and it is specifically held in para 5 "the right conferred upon a bonafide tenant can be availed of only twice and not thereafter". He pointed out that again in paragraph 9, it is held "the object is to protect the bonafide tenants from being evicted on the grounds of default by affording them further opportunity to make the payments of the arrears of rent at least at two times during the subsistence of tenancy".

17. Mr. Godbole further contended that in **V. Dhanpal Chettiyar's case (supra)**, the Supreme Court has held that where Rent Act applies, there is no concept/need of termination of tenancy by the landlord and the tenancy is

terminated only when the court passes a decree. Thus, till a decree is passed for eviction, the tenancy continues and, hence, in case of a subsequent default, even after the dismissal of the first suit, the proviso will give one more chance to the tenant and in case of a default pending the appeal from the decree in the first suit, that would not be a ground for eviction.

18. Mr. Godbole further submitted that the Supreme Court has clearly held that the time at which the provisions of section 12(3) have to be applied is a time during the pendency of the suit alone and the same can never be made applicable during the pendency of the appeal. According to Mr. Godbole, the Supreme Court has laid down the following propositions.

(a) If the powers conferred upon the trial court are under a specified statute and not under the Code, it has to be ascertained as to whether such a power was intended to be exercised by the Appellate Court as well. Such a position can be ascertained by having reference to a specified law by keeping in mind the legislative intention of conferment of power by the Appellate Court either expressly or by necessary implication.

(b) The power to fix "such other date" can be exercised only by the trial court and not by the Appellate Court.

(c) A relief against forfeiture can be granted to a tenant only twice during the subsistence of tenancy and not thereafter.

19. Mr. Godbole further submitted that if a tenant who has not complied with the conditions of section 12(3) for grant of relief against forfeiture during the pendency of the suit in the trial court cannot be granted such a relief by curing the default pending the appeal from a decree of eviction; similarly, a tenant who does not deposit the rent pending an appeal challenging the decree of dismissal of the suit cannot be evicted on that ground by the Appellate Court since that would frustrate the amendment of sub-section 3 and would defeat the legislative intent of conferment of a power to grant relief against forfeiture.

20. Such a default pending the appeal merely creates a fresh cause of action in favour of landlord to issue a notice of demand and thereafter institute a fresh suit.

21. Mr. Godbole submitted that the payments made by the petitioner in the trial court as can be seen from the Nazir’s report were made regularly with an interval of

three months and every time, rent of three months was deposited in advance. Relying on the judgment in **Mohan Hede v. Noor Mohammed, AIR 1988 SC 1111,** Mr. Godbole submitted that the trial court was justified in dismissing the suit.

22. Mr. Godbole further submitted that the judgments relied upon by the respondents are inapplicable since they interpret the unamended provisions of sub-section 3 of section 12 which did not contain any provisions for granting relief against forfeiture and in fact, the Supreme Court has held that under the said unamended provision, the court did not have jurisdiction to grant such a relief against forfeiture. He, therefore, submitted that the writ petition be allowed.

23. Before appreciating the rival contentions, it is necessary to have a look at sections 12(3)(a) and 12(3)(b) as they stood prior to amendment and section 12(3) as it stood after amendment.

> "12(3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in

sub-section (2), the [Court shall pass a decree] for eviction in any such suit for recovery of possession.

12(3)(b) In any other case no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due, and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court."

Section 12(3) introduced by the amending Act No.18 of 1987 reads as follows:

"12(3). No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and together

with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent, per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court.

Provided that, the relief provided under this sub-section shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant."

24. In **Lalchand's case (supra)**, the Full Bench of the Gujarat High Court was called upon to interpret section 12(3)(b) of the Rent Act. The question it had to consider was whether in view of the language of section 12(3)(b), in order to earn protection of that clause, the tenant whose case falls under that clause must continue to pay the standard rent and permitted increases and continue to pay or tender in court regularly such rent and permitted increases during the pendency of the appeal filed by the landlord after the dismissal of the landlord's suit for recovery of possession on the ground of non payment of rent.

25. After considering the relevant judgments on the point, the Gujarat High Court observed as under:

> "In the light of the above discussion we hold that Section 12(3)(b) of the Rent Act applies even at the appellate stage and the words "till the suit is finally decided" occurring in Section 12(3)(b) refer also the decision of the suit in appeal by the appellate Court when an appeal is preferred by the landlord against a decree passed by the trial Court dismissing his suit and the question arises before the appellate Court whether the tenant is entitled to the protection of Section 12(3)(b), the appellate Court would have to consider whether the tenant has, after paying or tendering in Court the arrears of standard rent and permitted increases on the first day of hearing of the suit or on or before such other date as might have been fixed by the Court, continued to pay or tender in Court regularly the standard rent and permitted increases till the decision of the appeal. If he has not paid the amount of standard rent and permitted increases as fixed by the trial Court and in case the appellate Court has enhanced the standard rent and permitted increases has not paid

> the difference arising because of such enhancement on or before such date as the appellate Court might fix and after such date continued to pay regularly the enhanced rent and permitted increases, the tenant would be deprived of the protection of Section 12(3)(b). In the light of the historical background and in the light of the decisions which we have referred to above, this is the only conclusion which can be drawn."

26. In **Mrinalini's case (supra)**, the Supreme Court was considering whether the term "regularly" used in section 12(3)(b) of the Rent Act is mandatory or directory. The Supreme Court held that the provisions of clause (b) of section 12(3) are mandatory and must be strictly complied with by the tenant during the pendency of the suit or appeal if the landlord's claim for eviction on the ground of default in payment of rent is to be defeated. The Supreme Court further observed that if the tenant persistently defaults during the pendency of the suit or appeal in paying the rent, the court has no discretion to treat what were manifestly irregular payments as substantial compliance. It may be stated here that the Full Bench judgment of the Gujarat High Court in **Lalchand's case (supra)** was cited before the Supreme Court and that is evident from the fact that it has made a specific reference to it.

27. What is sought to be contended is that the above judgments will not be applicable to the amended section 12(3) of the Rent Act. It is contended that the above judgments interpret unamended provisions of sub-section 3 of section 12 which did not contain any provision for granting any relief against forfeiture. Relying on the Supreme Court judgments in **Dhanpal's case (supra)** and **Arjun Khimal's case (supra)**, it is argued that in these cases, it is held that under the said unamended provision the court did not have jurisdiction to grant relief against forfeiture, which is now conferred on it and that would make all the difference.

28. Prior to the amendments where the rent was payable by month, where there was no dispute about standard rent and permitted increases and where the arrears of rent were payable for a period of more than six months, if the tenant did not pay the arrears of rent within one month from the date of service of notice of demand or he did not raise any dispute about the standard rent, the court had to pass an order of eviction. But, the tenants falling in the ambit of section 12(3)(b) could avoid a decree of eviction that is to say that in case where the rent was not payable monthly, the arrears of rent were for a period of less than six months and there was a dispute regarding standard rent, if the tenants were to deposit the entire amount of rent and permitted increases then due, on or before the first date of hearing of the

suit and if they were to continue to deposit the rent regularly in court till the disposal of the suit, the court could not pass a decree against them. Therefore, this category of tenants could avoid a decree. By Amending Act No.18 of 1987, relief was given to all the tenants. The amendment removed the earlier difference between the cases where rent was payable by month and where it was not so payable, where the rent was due for less than six months and where the rent was due for more than six months. Sub-section 3 of section 12 put all tenants on par and stated that no decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if on the first date of hearing of the suit or on or before such other date as the court may fix, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears of such standard rent and the permitted increases at the rate of 9% per annum and, thereafter, continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the court. The new provision added the liability of payment of simple interest on the amount of arrears of standard rent and permitted increases at the rate of 9%. This relief can be availed of only twice and not thereafter.

29. It is argued that in this case the tenant has

complied with the trial court's direction and deposited the arrears and made regular payment till the disposal of the suit. He must, therefore, get first relief against forfeiture. It is contended that till a decree is passed for eviction, the tenancy continues. Relief against forfeiture can be granted only during the subsistence of tenancy. After dismissal of first suit in case of a default pending the appeal from the first suit, the proviso will give the tenant one more chance. Such a default would not be a ground for eviction. The landlord will have a right to institute a fresh suit on the ground of default by issuing a fresh notice and even if the tenant deposits the rent in such second suit, the tenant will loose his right to get relief against forfeiture. Thereafter, the tenant will never get a relief against forfeiture even if the conditions for grant of such relief are complied with. This is how Mr. Godbole wants me to interpret section 12(3) with particular emphasis on its proviso.

30. It is not possible to accept this interpretation because that will lead to absurdity. It will make the pending appeal redundant and make the appellate court powerless. It will rob the appellate court of its authority to deal with a callous tenant. It is true that the proviso seeks to offer relief against forfeiture to tenants. But the rent legislation is not intended to merely offer protection to tenants. It also seeks to protect landlords from unscrupulous tenants. It attempts

to strike a balance. If the landlord is made to rush to file a second suit during the pendency of the appeal for the tenants' failure to pay arrears during the pendency of the appeal that would make mockery of this provision. It would lead to multiplicity of suits. Where appeal is filed, it would necessarily be extension of the suit for the purpose of section 12(3). It is not possible to hold that now there is a drastic change in the law to the extent that the earlier view of the Supreme Court in **Mrinalini's case (supra)** no longer holds the field. To canvass this submission, reliance is placed on the Supreme Court's judgment in **Damle's case (supra)**. In my opinion, this reliance is misplaced.

31. In **Damle's case (supra)**, the appellant tenant was sought to be evicted from the leased premises on the ground of defaults in making the payment of rent. In the trial court, the landlord made an application for arrears. On 3/9/1994, the trial court made an order of deposit. The Supreme Court noted the contents of the said order and observed that it clearly and unambiguously shows that it was not passed in terms of sub-section 3 of section 12 of the Bombay Rent Act. It was not passed at the request of the tenant but was passed on the application of the respondents-plaintiffs who had prayed for the payment of the suit amount rent. The Supreme Court observed that the said order was passed not on the first date of hearing or on or before any other date as fixed by the court and the amount mentioned in the order

was the suit amount which did not include permitted increases or interest and costs as contemplated by the said provision. The Supreme Court noted that despite the said order, the appellant did not make the payment within the time specified and defaulted the payment of future rent in terms thereof. The Supreme Court observed that the suit of the plaintiff therefore, could not be dismissed on the basis of the trial court's order dated 3/9/1994. It was dismissed on the ground that the landlord did not establish landlord and tenant relationship.

32. The landlord filed an appeal. The appellant-tenant filed an application under section 12(3) in the appellate court. The Supreme Court observed that in the application filed under section 12(3), the tenant had not made a prayer to the appellate court for passing any order which the trial court was intended to pass under the Code of Civil Procedure. The Supreme Court further observed that vide its order dated 18/1/2001, the appellate court had not extended the time and expressly permitted the appellant to deposit the arrears of rent without prejudice to the rights of the landlord and, therefore, the High Court was justified in holding that the appellant-tenant cannot take advantage of section 12(3) of the Bombay Rent Act at the appellate stage which he had failed to avail of before the trial court. The Supreme Court was concerned with a case where the tenant had made no application under section 12(3) before the

trial court. It is against the background of the above facts that the Supreme Court observed that the first date of hearing cannot be stretched to be any date beyond the date before the issues are framed. The Supreme Court then clarified that the object of this beneficial provision is to protect bonafide tenants from being evicted on the grounds of default by affording them further opportunity to make the payment of the arrears of rent at least twice during subsistence of tenancy and the provision is not intended to confer a right without circumspection to be availed of by the tenant at any time according to his convenience.

33. Therefore, a tenant who does not avail of benefit under section 12(3) cannot get its benefit at the appellate stage by contending that appeal is continuation of a suit. But on that basis a tenant who contends that he has deposited arrears in the trial court as per section 12(3) cannot stop depositing arrears in the appellate court by contending that he was obliged to pay arrears only in the trial court and appeal is not extension of the suit and, therefore, he need not pay rent in the appellate court at all and if he does not deposit, the landlord has to file a fresh suit. The tenant would in effect be contending that the appellate court is powerless to deal with such a tenant. Such can never be the intention of the legislature. In my opinion the judgment of the Supreme Court in **Damle's case (supra)** is not applicable to the present case because, it arose

out of different facts. It does not even remotely suggest that defaulting tenants should be allowed to misuse section 12(3). In fact the Supreme Court has observed that this provision is not intended to confer a right without circumspection to be availed of by the tenant at any time according to his convenience. Therefore, the judgment of the Supreme Court in **Damle's case (supra)** does not further the petitioner's case. In this connection, I may refer to **M/s. Goodyear India Ltd. v. State of Haryana & another, AIR 1990 SC 781**, where the Supreme Court has held that it is well settled that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follow from it.

34. As I have already noted, section 12(3) puts all the tenants on par, provides for simple interest at 9% on arrears and provides that right conferred upon a bonafide tenant can be availed of only twice and not thereafter. The changes introduced by section 12(3) are not such as would make the judgment of the Supreme Court in **Mrinalini's case (supra)** inapplicable to it.

35. In my opinion, it is unnecessary to refer to **Dhanpal's case (supra)** and **Arjun Khimal's case (supra)** in the context of issues involved in this case. In **Dhanpal's case (supra)**, the Supreme Court was considering whether in order to get a decree or order of eviction against a tenant under any State Rent Act, it is

necessary to give a notice under section 106 of the Transfer of Property Act. It was observed that when the State Rent Acts provide under what circumstances and on what grounds a tenant can be evicted, it does provide that a tenant forfeits his right to continue in occupation of the property and makes himself liable to be evicted on non fulfilment of those conditions. It was observed that in those Rent Acts where a specific provision has been made for giving of any notice, requiring the tenant either to pay arrears of rent within the specified period or to do any other thing, such as the Bombay Rent Act or the West Bengal Rent Act no notice under clause 111 (g) of the Transfer of Property Act is necessary. In this case, we are concerned with non payment of arrears of rent. The validity of the notice is not disputed. We are not concerned with the question whether notice is required to be given or not and, hence, **Dhanpal's case (supra)** can have no application to the facts of the present case.

36. In **Arjun Khimal's case (supra)**, the Supreme Court has held that section 114 of the Transfer of Property Act cannot be applied to a case where the suit for eviction of a tenant has been instituted not on the basis of forfeiture of lease under the Transfer of Property Act but on the basis of statutory provision dealing with the rights and obligations of the landlords and tenants such as section 12 of the Rent Act. In a case where a tenant renders himself liable to be evicted on the ground of

being defaulter in payment of rent as contemplated by sub-sections (2) and (3)(a) or section 12 of the Act, bar from the way of the landlord in instituting a suit for ejectment of a tenant is removed and he gets in right to have a decree for eviction. The Supreme Court observed that such removal of bar is not in any sense forfeiture of any rights under lease which the tenant held. The Supreme Court further observed that section 114 of the Transfer of Property Act which provides for relief against forfeiture for non-payment of rent, applies to a case where a lease of immoveable property has determined by forfeiture for non-payment of rent. Section 111 of the Transfer of Property Act deals with various contingencies whereunder a lease of an immoveable property determines. One of such contingencies being by forfeiture inter alia in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter. It was further observed that in a case where forfeiture of lease is claimed for non payment of rent, it would therefore have to be established that one of the express conditions of the lease provided that on breach of that condition namely on non payment of rent the lessor was entitled to re enter. It is only in those cases where such an express condition is contained in the lease and the lessee breaks the said condition and the lessor on his part gives notice in writing to the lessee of his intention to determine the lease that a lease of immoveable property determines by forfeiture for non payment of rent. It was observed that

in the case before the Supreme Court, the suit was not based on any such forfeiture of lease under the Transfer of Property Act but was filed for the enforcement of the statutory right conferred on the landlord by sub-section (2) and (3)(a) of section 12 of the Rent Act. It is in this context the submission that the tenant was entitled to relief against forfeiture of non payment of rent under section 114 of the Transfer of Property Act, if he deposits rent at any stage of hearing of the suit, was rejected. In that case, the Supreme Court was concerned with the question whether section 12(3) has retrospective operation or prospective operation and it upheld its prospective character.

37. In my opinion this judgment does not help the petitioner. Relief against forfeiture provided under section 12(3) could obviously be given to a tenant in a suit under the Rent Act in the manner provided therein. The submission of Mr. Godbole that a default pending the appeal merely creates a fresh cause of action in favour of the landlord to issue a notice of demand and thereafter institute a fresh suit does not find support in this judgment.

38. The appellate court has held that the petitioner is not regular in depositing rent in the trial court. Relying on the judgment of the Supreme Court, it is urged that the petitioner has made payments in the trial court regularly with an interval of three months and everytime,

a rent of three months was deposited in advance. Assuming that to be so, since admittedly the petitioner has not deposited rent in the appellate court, the appellate court has rightly held him to be a defaulter in view of the law discussed hereinabove. Hence, the impugned judgment and order calls for no interference.

The petition is dismissed.

39. At this stage, Mr. Godbole, the learned counsel for the petitioner states that the petitioner is desirous of approaching the Supreme Court and, therefore, the operation of the impugned decree be stayed. In the circumstances of the case, the operation of the impugned decree is stayed till 19/8/2005. Until further orders, the petitioner shall not sell, assign or transfer the suit premises or alienate, encumber or part with possession of the suit premises or create any third party interest or induct anyone in the suit premises. Liberty to the petitioner to apply to this court for time to vacate the suit premises if the Special Leave Petition is not entertained by the Supreme Court.

(SMT. RANJANA DESAI, J.)